

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRANKLIN MCKINLEY SCHOOL
DISTRICT.

OAH CASE NO. 2013090172

ORDER DENYING MOTION FOR
STAY PUT

On September 4, 2013, Student filed a request for due process hearing (complaint) naming the Franklin McKinley School District (District) as respondent. The complaint includes a motion for stay put. No responsive pleading has been received from the District.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

Student alleges in his complaint that he is entering the District having transferred from the San Jose Unified School District (SJD), where he had a 504 plan. Student is requesting that the District implement the SJD 504 plan as stay put.

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

As stated above, stay put is the last implemented Individualized Education Program (IEP). Here, Student fails to demonstrate that he had been found eligible for special education and had an IEP from SJD. Thus, Student's motion for stay put is denied without prejudice. Student may file a new motion for stay put if he can demonstrate that he had in place an IEP at SJD.

ORDER

Student's motion for stay put is DENIED without prejudice.

Dated: September 10, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings